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NO. 937

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

SWITCHMEN'S UNION OF NORTH AMERICA, IN its own right, etc., T. C. CASHEN, JOHN W. WOLFE and R. F. ROCKWELL, As representatives of the class of yardmen employed on the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West who are members of the Switchmen's Union of North America,

Petitioners,

vs.

NATIONAL MEDIATION BOARD, GEORGE A. COOK, WILLIAM M. LEISERSON and HARRY H. SCHWARTZ, Individually and as members of the National Mediation Board, and BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, NEW YORK CENTRAL RAILROAD COMPANY, a New York corporation, MICHIGAN CENTRAL RAILROAD COMPANY, a Michigan corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF

DONALD R. RICHBERG,
RUFUS G. POOLE,
Attorneys for Petitioners

Reasons for Granting the Writ

1. The decision of the Court of Appeals in the instant case is in conflict with the decision of the Circuit Court of Appeals for the Sixth Circuit in the case entitled *Brotherhood of Railway and Steamship Clerks, etc. v. N. C. & St. L. Ry. Co.*, 94 F. (2d) 97. It is also in conflict with decisions of the United States Court of Appeals for the District of Columbia in *B. R. T. v. National Mediation Board*, 88 F. (2d) 757, in *O. R. C. v. National Mediation Board*, 113 F. (2d) 531, and in *B. R. T. v. National Mediation Board*, No. 8311, decided by the same court the same day as the instant case.

2. The Court of Appeals has placed a new construction (by a divided court) on several of the most important provisions of the Act, thereby affecting the rights of over one million railway employees to representation by representatives of their own choosing in collective bargaining for the purpose of fixing their wages and working conditions. A final and authoritative determination of the issues presented is of vital concern to these employees and to the managements of all the railroads of the United States.

3. The Court of Appeals has, by a divided court, decided, we believe erroneously, questions of great public importance affecting and disturbing seriously the existing relations between employer and employees on substantially all railroads in the United States, and inevitably fomenting controversies between railroad labor organizations and between railroad managements and railroad labor organizations, which should be avoided so far as possible, particularly in the present time of war.

WHEREFORE, the petitioners pray that a writ of certiorari issue to review the judgment of the United

States Court of Appeals of the District of Columbia entered in this case February 15, 1943.

Respectfully submitted,

DONALD R. RICHBERG,
RUFUS G. POOLE,
Attorneys for Petitioners.

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SWITCHMEN'S UNION OF NORTH AMERICA, IN its own right, etc., T. C. CASHEN, JOHN W. WOLFE and R. F. ROCKWELL, As representatives of the class of yardmen employed on the Michigan Central Railroad Company and the New York Central Railroad Company—Lines West who are members of the Switchmen's Union of North America,

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Respondents.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Preliminary Statement

We refer to the foregoing petition for a citation of the opinion below, statement of grounds of jurisdiction,

citation of statute involved and a summary statement of the case.

ARGUMENT

This argument is not addressed to the merits of the case except so far as such discussion is incidental to presenting a brief argument in support of the reasons stated in the petition for granting the writ.

I

Conflict With Other Decisions

The decision of the Court of Appeals is in conflict with other decisions of this and another Court of Appeals. It has been consistently held heretofore that the underlying principle written into the Railway Labor Act was the right of self-organization. It previously held, in *B. R. T. v. National Mediation Board*, 88 F. (2d) 757:

> "The general purpose of the Labor Act was to promote peaceful and conciliatory consideration of labor disputes, and especially to secure the right of collective bargaining through a representative chosen by a majority of the employees in a particular craft or class. It is not going too far to say that the basic and underlying purpose of the Act was to insure representation *in accordance with established custom* to those employees *whose interests are involved.* But the Act leaves uncertain the precise or exact meaning of the words 'class or craft', and we think obviously for the reason that it was intended by Congress to adopt the designation of class or craft as determined by the *then current working agreement* between the Railroad and particular groups or classes of its employees: * * * (Emphasis supplied.)
>
> * * * * *
>
> " * * * we think it is obvious that how classes are to be formed and who shall compose them are matters left *to the employees themselves;* and so we think

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The above-named petitioners respectfully pray that a writ of certiorari issue to review the judgment of the

United States Court of Appeals for the District of Columbia entered in the above-entitled cause on February 15, 1943.

Opinion Below

The opinion of the Court of Appeals, not yet reported, appears in the printed record, pages 180-193 and the dissenting opinion by Mr. Justice Rutledge is at pages 194-201.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. 347).

Statute Involved

The pertinent provisions of the Railway Labor Act, as amended, (hereinafter sometimes referred to as the Act), (45 U.S.C., Par. 151 *et seq.*) are set forth in the appendix to this petition.

Statement of the Matter

This case arose out of an alleged dispute over whether the yardmen working in certain yards of the New York Central Railroad Company were legally entitled to representation by the Switchmen's Union of North America (hereinafter referred to as the Switchmen's Union), one of the petitioners, or by the Brotherhood of Railroad Trainmen (hereinafter referred to as the Brotherhood), one of the respondents. At the time the dispute was investigated by the National Mediation Board (hereinafter referred to as the Board), and for many years before, the yardmen employed on the New York Central were represented and working under agreements negotiated by either the Switchmen's Union or the Brotherhood. The Switchmen's Union was the accepted representative of yardmen in all yards on the

Michigan Central lines west of the Detroit River (including the South Bend Transfer Crews) and in all yards of the New York Central-Lines West (of Buffalo) except nine yards covered by Brotherhood contracts. The Brotherhood represented yardmen in all yards of the Michigan Central east of the Detroit River (these being in Canada), all yards of the Boston & Albany, the New York Central-Lines East (of Buffalo), the Cleveland, Cincinnati, Chicago and St. Louis (hereinafter referred to as the Big Four) and the Toledo & Ohio Central Lines. (R. 168-170) There was no question raised by the Switchmen's Union or by anyone else concerning the right of the Brotherhood to represent yardmen covered by Brotherhood contracts. (R. 40, 90, 91)

On July 2, 1940, the Brotherhood invoked the services of the Board to investigate an alleged dispute among New York Central yardmen, and claimed the right to represent all yardmen employed by the New York Central Railroad Company. The Brotherhood contended that *all* the yardmen employed by the company should be voted for the purpose of selecting a single representation. (R. 31-35)

The Switchmen's Union opposed the demand of the Brotherhood contending:

1. That no one was disputing the right of the Brotherhood to represent the yardmen covered by its contracts and that, therefore, those yardmen were not involved in any dispute over representation;

2. That there was no evidence that any specific number of yardmen covered by the Switchmen's Union contracts desired any different representation and that, therefore, there was no basis for holding an election;

3. That, in any event, only the yardmen covered by the Switchmen's Union contracts could be re-

garded as "involved" in any dispute; and that the Board was authorized only "to take a ballot of the employees involved" in a dispute. (Railway Labor Act, Sec. 2, Ninth)

The Board held, however, that, as a matter of law, it was required to vote all the employees of a single carrier working in one craft whenever a dispute arose among some of the craft workers over their representation. It held that the New York Central Railroad Company was a single carrier and that, accordingly, since a dispute had arisen over the representation of some of the yardmen employed by this carrier, *all* the yardmen must be voted in an election which would determine one representation for all such employees. (R. 31-54)

It was obvious that if the ruling of the Board were correct the Switchmen's Union could no longer represent its members, even in yards on parts of the railroad system where the overwhelming majority of the yardmen desired representation by the Switchmen's Union. The total number of yardmen employed by the New York Central Railroad Company was approximately 6,087. Disregarding the New York Central-Lines West and the Michigan Central, where a majority of the yardmen were covered by the Switchmen's Union contracts, the Brotherhood contracts covered approximately 3,653 yardmen employed on the Boston & Albany, the New York Central-Lines East, the Big Four and the Toledo & Ohio Central lines. (R. 40) It was evident, therefore, at the outset that a majority of *all* the yardmen employed by the New York Central Railroad Company would vote for the Brotherhood. But the Board decided to vote all the yardmen, and conducted an election, despite the protests of the Switchmen's Union, and certified that the Brotherhood had received a majority of the votes (as was inevitable). (R. 54-57)

Thereupon, the Switchmen's Union filed a bill of complaint (which inaugurated the present case) in the District Court of the United States for the District of Columbia, seeking, first, to enjoin the Board from holding an election and, then, by an amended complaint after the election had been held, seeking to have the action and certification of the Board annulled and set aside as being without authority and in violation of the provisions of the Act under which the Board purported to act. (R. 3-31)

The District Court dismissed the complaint on July 10, 1942, after making findings of fact and conclusions of law supporting the action of the Board. (R. 86-93) Thereupon, an appeal was taken to the United States Court of Appeals for the District of Columbia. While that appeal was pending, the District Court granted the plaintiff's motion for a preliminary injunction pending appeal.

The majority opinion of the Court of Appeals sustained the position of the Board in holding that the Act compelled the Board to vote all the employees of a craft employed by a single carrier when a dispute arose requiring an election to determine the representation of members of the craft. (R. 180-193) In his dissenting opinion, Mr. Justice Rutledge took the position that under the Act the Board had the discretion to determine whether or not all the employees of a craft must be voted whenever a dispute arose among some of the employees which required an election to determine their representation. (R. 194-201)

Thus, there are three possible constructions of the Act presented for the consideration of this Court: (1) That the Act compels the selection of a single representation by all employees of a particular craft who are employed by a single carrier (the majority opinion of the Court of Appeals); (2) that the Act gives the Board

a discretion to determine the appropriate or proper unit of employees who may participate in the election (the dissenting opinion of the Court of Appeals); (3) that the Act authorizes the Board to allow only those employees who are "involved in the dispute" to participate in the election, and that the Board cannot arbitrarily include as "employees involved in the dispute" employees who are not, in fact, involved in any dispute over their representation (the contention of petitioners).

A final and authoritative construction of the statute is urgently needed because long before, and ever since, the Act was passed, railroad workers of the same craft have been represented by different organizations in different geographical and operating divisions of railroad systems; and this new requirement that no organization may continue to represent a portion of a railroad unless its members comprise a majority of all employees of the craft employed by one railroad system, or "single operating carrier", will bring about the destruction of long-established contracts and relationships between carriers and employee organizations and innumerable jurisdictional conflicts injurious alike to railroad management and railroad labor.

In the present case, Mr. John J. Walber, Vice President of the New York Central System and a veteran authority on labor relations, testified that the agreements on file with the Board showed that "there cannot be any dispute as to representation with the Brotherhood of Railroad Trainmen on the Boston & Albany Railroad, the New York Central Railroad (Buffalo and east) and the C. C. C. & St. L. Railway (Big Four) as the B.R.T. holds the agreements on these properties." (R. 170) He also stated that "to have a vote include portions of the railroad where the Brotherhood of Railroad Trainmen is recognized, and on which there

cannot possibly be any dispute, would violate a continuous history of more than thirty years' duration in making agreements covering these particular classes of employees." (R. 172) He testified concerning his knowledge of the resentment of the employees over the disregard of minority rights, and said, "It is that mental attitude on the part of these employees that we anticipate is going to make a world of trouble for us if there is any change in this situation." (R. 176)

Questions Presented

1. Is the Board *required* by the Act to hold that, as a matter of law, all the employees of a single craft employed by a single operating carrier must be voted to determine a single representation, even in situations where, as a matter of fact, there is no dispute over the representation of a large majority of these employees?

2. Does the Act authorize the Board to exercise a discretion to determine what employees of a single craft employed by a single carrier are involved in a dispute over representation and may participate in an election to determine that representation; or does the Act deny to the Board the authority to exercise any discretion?

3. Does the Act authorize or permit the Board, in the exercise of its discretion, to hold that employees who have no dispute in fact over their representation under existing contracts, are "involved" in a dispute as to who shall represent other employees under other existing contracts?

4. Does the Act require the Board to hold that a carrier means a single operating carrier and that all the employees of one craft of a single operating carrier must be voted if a dispute arises over a representation of employees of a subsidiary carrier or a portion of a carrier?

that by reference to the terms of the working agreement which the employees have made, is to be found at least some evidence of who are members of the class or craft covered by the agreement. The Board also recognizes that this is a criterion, for in its First Annual Report to Congress, after noting that the Act does not give it authority to define the crafts or classes, it says: 'So far as possible the Board has followed the past practice of the employees *in grouping themselves* for representation purposes and of the carrier *in making agreements* with such representatives.'" (Emphasis supplied.)

Also the court held:

> "* * * But, as we have seen, the intent of Congress, in leaving undefined by the Act the personnel of the class authorized to choose a representative, was to adopt and confirm the grouping *as it then was recognized and established by mutual agreement of employees and carrier.* * * *" (Emphasis supplied.)

This same court, in *O. R. C. v. National Mediation Board*, 113 F.(2d) 531, also pointed out that the Act was intended not merely to protect independence and the right to organize but also to settle disputes and to avoid interruptions, holding: "Accordingly it aims not to compel the creation of new craft or class lines but to recognize the lines which are drawn in the industry." And finally the court cited the proviso of Section 1, Fifth, in the following language:

> "* * * The Railway Labor Act provides that 'no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action.'"

But in the present case, this same court upheld a ruling of the Board which would destroy existing con-

tractual relations and minority organizations of the employees, and prevent an organization, which had represented a particular class of yardmen for many years prior to and since the adoption of the Act, from continuing to represent these employees who desired and were satisfied with that representation.

In the present case, the Board and the court disregarded long-established practices of railroad employees in the matter of self-organization and opened the way for the compulsory reorganization of large numbers of railway employees, contrary not only to their desires but to long-established practices.

The Switchmen's Union has always been an organization of yardmen, whose work is localized in particular points on a railroad system. The Brotherhood is an organization which includes conductors and brakemen engaged in transportation service and working over large geographical areas. But the Brotherhood also includes within its jurisdiction, yardmen, and, under the Railway Labor Act, that is permissible. The section of the Act quoted in the foregoing opinion provides not only that orders of the Interstate Commerce Commission shall not be "construed to define the crafts according to which railway employees may be organized by their voluntary action", but the proviso continues as follows:

> " * * * nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission." (Section 1, Fifth)

No Board or court is authorized by the Act to require the Brotherhood to exclude or to include yardmen in the membership and, for the same reason, no one is authorized under the Act to require the Switchmen's Union to extend its membership over the thousands of

miles comprehended within the New York Central System in order that it may be permitted to continue to represent yardmen on those portions of the system whereon this union has been long organized. But the practical effect of the rulings in this case is that no organization can survive as a representative of employees unless it seeks to organize, and successfully organizes, within its membership a majority of all the members of its craft who are employed by one operating carrier.

The words "craft or class", which appear in the Act, are lumped together by the lower court so that the word "class" becomes practically meaningless. But, from its nature, the word "class" can be either more *or less* comprehensive than the word "craft". A class of employees might include several crafts as, for example, the railroad carmen, who include carpenters and painters, elsewhere regarded as separate crafts, but who are grouped together in railroad service as a single craft or class. Yardmen who are working on the Michigan Central may be members of the same craft as yardmen working on the Boston & Albany. But as members of the Switchmen's Union, working under Switchmen's Union contracts, they are a separate class of employees from yardmen on the Boston & Albany, working under a Brotherhood contract.

Vice President Walber of the New York Central testified that for the craft of train dispatcher, the Boston & Albany, New York Central, and Big Four had agreements with the American Train Dispatchers' Association. But on the Michigan Central, the dispatchers' agreement was with the Order of Railway Telegraphers. He testified that the Railroad Yardmasters of North America held agreements on parts of the New York Central lines; but that on the Big Four there was an agreement with the Big Four System Yardmasters'

Association; and on the Ohio Central lines, the Brotherhood of Railroad Trainmen represents yardmasters. (R. 168)

If the fundamental principle of the Act, enunciated in the two cases previously cited, were maintained in the present case, the right of self-organization of the employees would be held superior to any coercive effort by a majority of one craft to compel all craft employees everywhere on a railroad system to accept their representation.

The United States Circuit Court of Appeals for the Sixth Circuit recognized this principle in *Brotherhood of Railway and Steamship Clerks v. N. C. and St. L. Ry. Co.*, 94 F. (2d) 97. In that case, there was a dispute over whether two classes of so-called "clerks" should be voted separately or jointly. One class of clerks had been organized for many years and had an agreement with the carrier. In 1934, the Brotherhood of Railway and Steamship Clerks organized a majority of other classes of station workers and some of the clerical employees. The Board voted the clerical employees and the others separately. The clerical employees favored their own association by a majority vote, whereas the other employees voted for the Brotherhood. The total of both ballots would have given a majority to the Brotherhood. The Brotherhood sued for an injunction to compel the carrier to treat with it as the designated representative of both classes of employees. The issues in that case paralleled exactly the issues in this case, but relief was denied and the Circuit Court of Appeals affirmed the decision of the District Court. The Court of Appeals held that the intent of the Act was to preserve existing crafts and classes of employees as units for collective bargaining, citing Section 1, Fifth, and Section 2, Fourth, and holding, in part, as follows:

"The terms 'craft' or 'class' are not defined. It is

fair inference that the *Congress intended that collective bargaining groups already constituted and functioning were to be recognized*, and it is likewise fair inference that the terms were left sufficiently elastic to meet not only changing conditions but also varying existing conditions among the employees of carriers differing greatly in size, number of employees, intensiveness of their organization, and differences in its origin, scope, and development. * * * " (Emphasis supplied.)

We submit that the holding of the Sixth Circuit is in direct conflict with the holding of the Court of Appeals in the present case, but that the holding of the Sixth Circuit is consistent with the two opinions of the court below in the cases previously cited.

It should further be pointed out that on the very day on which the instant case was decided, the same court unanimously made an inconsistent ruling in *B. R. T. v. National Mediation Board*, No. 8311, which the majority opinion treats as an exception, but which we submit is consistent only with the previous opinions of the court and with the dissenting opinion in the instant case.

II

Misconstruction of the Railway Labor Act

One of the major purposes of the Act is stated to be (Section 2 (Clause 2)) "to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise of the right of employees to join a labor organization" and, (Section 2 (Clause 3)) "to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act."

In the same Section 2, under the heading of "General Duties", it is provided: "First. It shall be the duty of all carriers, their officers, agents and employees to exert

every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions" etc. Previously, it had been provided, in Section 1, Paragraph Fifth, that "Nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission." From the foregoing provisions, it must be evident, first, that the employees have the right to organize in such numerical or geographical units as they themselves desire and, second, that when an organization of employees has made a contact with a carrier, it is the duty of the carrier and of the employees "to exert every reasonable effort to make and maintain" such an agreement.

But when the Board decided that all yardmen employed by the New York Central Railroad Company must be voted to determine a single representation, the Board made it inevitable that the minority of such yardmen who were members of the Switchmen's Union would no longer be able to be represented by representatives of their own choosing or to work under contracts which their organization had maintained continuously for some thirty years.

The Board attempted to justify its ruling and was sustained by the lower courts on the theory that the amendments of 1934, which authorized the Board to hold elections to determine employee representation, which authorized the Board to "designate who may participate in the election" (Section 2, Ninth), and which provided that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act"—(Section 2, Fourth)—seriously modified the foregoing General Purposes and General Duties which were, however, *rewritten into the Act in the amendments of 1934.*

The Board and the courts below took the position that the "majority of any craft or class of employees" must mean the majority of all the workers in a particular craft or class who were employed by a single carrier. But the Board was not compelled so to construe the Act, because the very language of Section 2, Ninth, authorizing the Board to hold an election, limited the authority of the Board, and limited participation in the election, to the employees "involved in the dispute". It was not only unnecessary but absolutely contrary to fact for the Board to take the position that all the employees of one craft, that is, all yardmen of the New York Central Railroad, were involved in a dispute over representation when there was not the slightest question that, as a matter of fact, a large majority of the yardmen had exactly the representation they desired through the Brotherhood, which no one was disputing. There was, furthermore, no evidence before the Board that any substantial number of yardmen working under the Switchmen's Union contracts were dissatisfied with that representation. However, if some of these yardmen, members of the Brotherhood, but working under contracts held by the Switchmen's Union, *did* raise a dispute over their representation, then, as a matter simple fact, no employees would be involved in that dispute except those working under the Switchmen's Union contracts.

The Board and the courts below seem to have assumed that all employees of a particular craft or class who are employed by a single carrier are immediately "involved in the dispute" when any group of such employees desire a change in their representation. But the provision of Section 2, Paragraph Fourth is *not* that "the majority of any craft or class of employees" *who are employed by a carrier* "shall have the right to determine who shall be the representative of the craft or

class for the purposes of this Act". On the contrary, if we read ahead into Paragraph Ninth, it is evident that the words which are implied, but omitted, in Paragraph Fourth are the following italicized words: "The majority of any craft or class of employees" *who are involved in a dispute* "shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

This reasonable construction of the Act, so as to make the provision for an election consistent with the repeatedly-declared right of self-organization, is in harmony with the dissenting opinion of Mr. Justice Rutledge. It is unquestionably true, as the dissenting opinion points out, that the Board must decide "who may participate in the election"; and, obviously, "that decision is not to be made arbitrarily or uniformly in all cases without regard to the varying conditions presented". In other words, as we contend, the Board must determine what employees are "involved in the dispute" and, on that basis, decide who may participate in the election.

We think it would be an arbitrary decision if the Board were to hold that all employees of a craft were involved in a dispute over representation despite evidence that the vast majority of the employees was entirely satisfied with, and not involved in any dispute over, their representation. However, we can certainly agree with the dissenting justice that this is a matter for the Board to decide.

The Board is obligated to make a decision based on an investigation of the facts; but, in the present case, the Board made its decision on the basis that it had no discretion, but was required under the law to vote all the yardmen of the entire railroad. (R. 53, 4th full par.) It was that ruling that was upheld by the courts; and we submit that that ruling not only disregards the duty

to determine an issue of fact, which is imposed on the Board in Section 2, Ninth, but also construes the election provision of the Railway Labor Act in such a manner as to run absolutely contrary to the general purposes and general duties declared in the Act.

III

Public Importance of the Issues

The issues here involved are of grave public importance. This Court will take judicial notice of the following matters of common knowledge:

(1) That railroad transportation is of vital importance to the entire nation and is a critical necessity in time of war;

(2) That the efficiency and safety of railroad transportation depends in considerable measure upon the maintenance of satisfactory and harmonious relations between employer and employee;

(3) That, under the Act, there have been no strikes or interruptions of service of any importance for nearly seventeen years, since the passage of the Act May 20, 1926;

(4) That railway employees are almost completely organized in brotherhoods and unions of long standing whose jurisdictions have been long established.

It is made clear in the evidence in this case that, as a result of frequent overlapping of the jurisdiction of various railway labor organizations, different organizations of employees of the same craft are common on the large railroad systems. It is obvious that the basis of sound collective bargaining lies in the requirement of the Act that "employees shall have the right to organize and bargain collectively through representatives of their own choosing (Section 2, Fourth). Thus, it is apparent that the issues in this case are of great public importance and that an authoritative construc-

tion of the Act to lay down principles, under which the Board will act in conducting an election, is urgently needed.

Conclusion

Without undertaking at this time to present an adequate argument on the merits, we submit that the petition for a writ of certiorari should be granted in order that the Court may review the decision of the United States Court of Appeals for the District of Columbia in this case.

Respectfully submitted,

DONALD R. RICHBERG,

RUFUS G. POOLE,

Attorneys for Petitioners

(Appendix follows)